



Mandatory Arbitration

PROGRAM GUIDE

**CONTRACTORS STATE
LICENSE BOARD**

California Department of Consumer Affairs





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MANDATORY ARBITRATION PROGRAM GUIDE

What is...

Ar•bi•tra•tion n. 1. The process by which the parties to a dispute submit their differences to the judgment of an impartial neutral person appointed by statutory provision.

Many disputes between consumers and contractors can be resolved efficiently and satisfactorily through arbitration. Mandatory arbitration is a process in which an impartial third person is appointed by the Contractors State License Board (CSLB) or its representative to make a final decision in a dispute between two or more parties.



CSLB offers arbitration to resolve disputes that meet certain criteria. CSLB will pay for the hearing, the arbitrator, and the services of one state-appointed expert witness per complaint. Only contractors in good standing with CSLB will qualify to participate in arbitration. Complaints involving deceptive or fraudulent practices will be investigated by CSLB.

This brochure provides the information necessary to understand the CSLB arbitration program for the resolution of complaints in which the damage is \$12,500 or less.

Does My Case Qualify?

A case qualifies for mandatory arbitration under Business and Professions Code Section (B&P) 7085, if:

- (1) The claim for financial injury does not exceed \$12,500;

- (2) The contractor possesses a license that is in good standing;
- (3) The contractor does not have a history of repeated or similar violations;
- (4) The contractor does not currently have a disciplinary action pending against him or her; and
- (5) The parties have not previously agreed to or are willing to waive a contractual agreement to arbitrate.

There are two distinct categories of complaints. For a case that involves a **patent** (obvious) act or omission that is a violation of the Contractors State License Law, a complaint must be filed within four (4) years of the alleged wrongful act or omission. For a case that involves a **latent** (undetected) act or omission regarding structural defects, a complaint must be filed within 10 years of the alleged wrongful act or omission. A **structural defect** is a condition that would probably result in a failure in the load bearing portion of a structure that was not constructed in compliance with the building code in effect at the time and the condition results in an inability to use the affected portion of the structure for the purpose for which it was intended. Either type can be filed within the duration of any written warranty in which the breach occurs (B&P Code Section 7091, 7109, and 16 CCR 861.5).

Mandatory and Binding Arbitration

“Mandatory” and “binding” are key terms to understand before entering into arbitration. Participation in this program is **mandatory** if a complainant wishes to have his or her complaint resolved by CSLB. If the complainant (the person filing the complaint) chooses not to participate in arbitration, the complaint will be closed and no further action will be taken by CSLB. If the complainant chooses to participate in arbitration, the respondent will be obligated to participate. If the respondent (the party

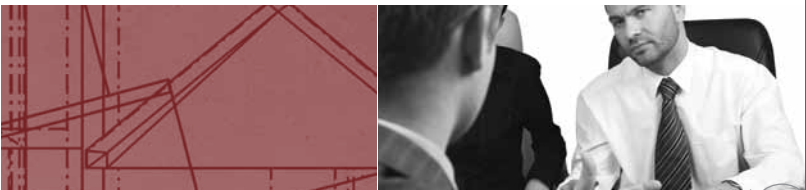
against whom the complaint is filed by the complainant) refuses to participate in arbitration and the complainant obtains an award against the respondent, the award will be enforced as if the respondent had been present at all of the proceedings.

Arbitration in this program is **binding**. This means that both parties, whose dispute is resolved by an independent third person (the arbitrator), must comply with the decision of that third person. In binding arbitration, parties who refuse to comply with the arbitrator's award may be taken to court where the arbitration award could be confirmed and turned into a civil judgment against them. In addition, a licensed contractor who fails to comply with an award that is issued against them may have their license suspended or revoked.

The Arbitration Forum

An "arbitration forum" has been selected to administer arbitrations for CSLB. The arbitration forum has professional arbitrators throughout California who have been trained to resolve construction disputes. All have undergone intensive training to ensure that both parties receive a fair hearing. The arbitration forum will contact you after CSLB refers your dispute for scheduling.

When the arbitration forum receives a signed "Submission to Mandatory Arbitration" form, it will select an arbitrator to conduct the hearing. The arbitration forum will then set a hearing date, time, and place, and will notify the parties in writing.



When to Consider Arbitration

Parties to a construction contract should consider arbitration when communication has broken down, when a complainant has filed a complaint with CSLB, and CSLB has determined that the dispute could be effectively handled through arbitration.

Once a representative of CSLB determines that a complaint involving damages (financial injury) of \$12,500 or less qualifies for arbitration, a Submission to Mandatory Arbitration form (131-117) will be sent to the consumer and the contractor. This form, indicating the names and addresses of the respective parties, will outline the claims and relief sought by each party. This form will advise both parties of the consequences of failing to participate in arbitration. If the complainant does not return a completed and properly executed (signed and dated) submission form to CSLB within 30 calendar days of CSLB's mailing date, the complaint will be closed and no further action will be taken by CSLB.

If the respondent does not return a properly executed Submission to Mandatory Arbitration form within 30 calendar days, and the complainant does, the complaint will be resolved through arbitration and any award rendered against the respondent will be enforced as if both parties had been present at all of the proceedings.

CSLB will send copies of the signed submission forms to the other party so that both of them will know exactly what issues are in dispute and what remedies are being sought. Both can then prepare their cases for presentation at the arbitration hearing. A copy of the signed submission forms will also be sent to the arbitration forum.

Preparing Your Case

Each party will be responsible for his or her own case presentation at the hearing, including relevant documents. (Documents previously sent to CSLB for the complaint file will not be forwarded to the arbitration forum.)



Parties may hire an attorney to represent them or they may present their own cases. In either instance, case preparation is very important. Both parties should review the submission forms to thoroughly understand all of the issues and as preparation for gathering relevant evidence.

Following is a list of items that may be helpful in presenting evidence to the arbitrator at the hearing. This list is not intended to limit you from presenting other evidence that you deem necessary.

Contract

- Gather the contract, plans and/or specifications, proposals, or any other evidence of an agreement with the other party that tends to prove the services, materials, etc., that were to be provided and for how much.*

Payment

- Include checks, receipts, and ledgers that prove what has been paid, what is owed, and what services or materials were provided.

Performance

- Collect evidence from an expert witness that proves the services, materials, etc., were or were not provided in accordance with the contract, plans, and specifications or agreement. (If the state has paid for an expert witness, that expert's report will be sent to the arbitration forum by CSLB.)

Financial Injury

- Submit evidence of the financial injury caused by deficient, defective or incomplete work. Financial injury may be established by presenting correction/completion cost estimates provided by an expert witness or by other contractors.
- Present the contract, the amount of money you have paid or value of services, materials, etc., you have received or provided.
- Identify the amount owed on the contract and the amount of money that it will cost you to correct/complete the job, or the amount of money owed to you.

** IMPORTANT NOTE: YOU MUST PROVIDE COPIES OF ALL PERTINENT DOCUMENTS TO THE ARBITRATOR, since documents you have submitted to CSLB are not forwarded to the arbitration forum.*

Expert Witnesses

CSLB will pay for one state-appointed expert witness per case.

An expert witness is a person who has extensive work experience and is competent to evaluate the work that is in dispute. If an expert witness is needed, CSLB will hire one prior to referring

the dispute to arbitration. This expert will become the state-appointed expert for the dispute.

When a state-appointed expert is used, both parties will receive a copy of the report of the expert witness shortly after the dispute is referred to the arbitration forum. Either party may use the expert witness at the arbitration hearing. A party who wishes to use the testimony of the state-appointed expert at the hearing will be responsible for making arrangements with the witness to ensure his or her attendance at the hearing.

Arrangements to have a state-appointed expert testify should be made with the expert at least 15 days prior to the scheduled hearing.

The consumer or the contractor may use an expert who is not appointed by the state, but that party will be responsible for arranging and paying for the services of that expert witness.

To locate an expert who is not appointed by the state, consult local sources, references, trade associations, building exchanges, or the telephone directory.

The Hearing

Arbitration hearings are conducted in an informal setting and are designed to bring out the facts involved in a case.

The complainant presents his or her claims, evidence, and witnesses first, and the respondent follows with his or her



claims, evidence, and witnesses. Parties may be represented by legal counsel if they wish, but at their own expense. The rules that govern arbitration hearings under this program are found in B&P Code Section 7085.5.

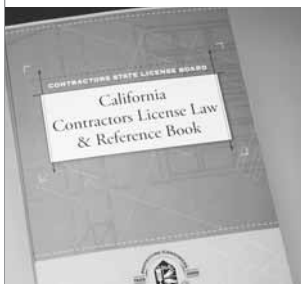
When a hearing is completed, the arbitrator has 30 calendar days in which to render a decision. The arbitrator has the authority to rule on the asserted claims and to award for monetary damages.

The Award

The arbitrator's award is final and binding; both parties must abide by the terms of an award. If either party does not comply, the other may petition the court to have the award confirmed and made a judgment of the court. The court can then enforce the award as its civil judgment.

The procedure for enforcing awards can be found in the Code of Civil Procedure starting with Section 1285. However, if court enforcement is necessary, an attorney should be consulted.

Consumers who wish further recourse through the courts after an arbitration award is rendered must do so at their own expense. A consumer or contractor's refusal to accept the terms of an award will not preclude CSLB from taking action after an award is granted.



CSLB has the authority to discipline contractors who do not comply with an arbitration award. **Most awards will specify a final date for compliance.** If the award is against the contractor and the contractor does not comply within the time specified in the award, the consumer should

notify CSLB's Northern California Case Management Office at P.O. Box 26888, Sacramento, CA 95826. CSLB will investigate the report of noncompliance and, if appropriate, CSLB may suspend the contractor's license. If the contractor complies with the arbitrator's award within 90 days, his or her license may be reinstated; otherwise, it will be revoked.

NOTE: Civil Code Section 2855 states, "An arbitration award rendered against a principal alone shall not be, be deemed to be, or be utilized as, an award against his surety." The fact that a consumer receives a favorable award through CSLB arbitration program does not mean that a surety company must pay the consumer from the proceeds of a contractor's license bond.

Points to Remember about Mandatory Arbitration

- Arbitration may be mandatory if the complaint is to be resolved by the Contractors State License Board.
- The complainant must return a properly executed Submission to Mandatory Arbitration form to CSLB within 30 calendar days of receipt.
- CSLB will pay for the hearing, the arbitrator, and the services of one board-appointed expert witness per complaint.
- Arbitration hearings are informal and held at a location near the parties.
- Only selected cases involving contractors with good records will be referred to arbitration.
- Once the complainant returns a properly executed Submission to Mandatory Arbitration form, the complaint will be referred to arbitration whether or not the contractor returns one.

- Both parties are responsible for preparing their cases and presenting them at the hearing.
- If parties want a record of the hearing, they will have to pay for a court reporter or make other arrangements to record the proceedings.
- If parties want to be represented by an attorney, they will have to hire one at their own expense.
- If parties need an expert witness to assist in the presentation of their cases, they may hire one at their own expense, or they may use the services of a CSLB-paid expert witness.
- In most cases, a party will not be able to file an independent civil suit in court regarding the same issues that have been decided through arbitration.
- Grounds for correcting or otherwise altering an arbitration award once rendered are very limited.
- An arbitration decision rendered against a contractor does not necessarily result in a payout on the license bond.
- If a contractor files for bankruptcy, CSLB or the arbitration association must be notified immediately.

Why Arbitration?

- Arbitration is fast. It takes approximately 50 days to resolve a dispute.
- Arbitration provides an informal setting to resolve a dispute.
- Arbitrators are experts trained in hearing construction matters.
- Arbitration is binding.
- An award may be enforced in court.

. . . to the Consumer

- If the contractor fails to comply with the award, the contractor's license may be suspended or revoked.

. . . to the Contractor

- Under current complaint disclosure laws and policies, a complaint filed against a contractor will not be disclosed to the public unless the contractor fails to comply with the award, and if the license is suspended or revoked.
- A contractor's license will not be suspended or revoked on a complaint allegation referred to arbitration unless the contractor fails to comply with the arbitrator's award.

Addresses and phone numbers for offices of the Contractors State License Board are found in the white pages of the telephone directory under State of California listings or online at **www.cslb.ca.gov**. CSLB also offers an automated toll-free telephone line: **800.321.CSLB (2752)**.

Contractors State License Board
P.O. Box 26000
Sacramento, CA 95826

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